

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 25 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

FERNANDO ESPINOZA AVALOS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-72447

Agency No. A75-260-255

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON and BEA, Circuit Judges.

Fernando Espinoza Avalos, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

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from an immigration judge's removal order. We deny in part and dismiss in part the petition for review.

We deny Espinoza Avalos' request that we remand his case to the agency for consideration of his application for cancellation of removal because he withdrew his application on November 19, 2002. We lack jurisdiction to consider his contention that he withdrew his application without prejudice because he failed to raise that issue before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (holding that exhaustion is mandatory and jurisdictional).

Espinoza Avalos' petition is not timely as to the BIA's July 16, 2004 order. *See Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

Espinoza Avalos' remaining contentions lack merit.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.